

REMARKS

After the foregoing amendment, claims 1 to 60 are pending, with claims 1, 18, 36, 37, 50, and 51 being the independent claims. New dependent claims 59 and 60 have been added. Applicant respectfully requests entry of this amendment and allowance of the remaining claims.

Election Requirement

In the previous Office Action of July 31, 2006, the Examiner required election between the different embodiments described in this application, and Applicant responded in the Amendment of September 25, 2006 by electing Group IV, Figures 13 to 16, for examination. In the current Office Action, the Examiner has not specifically indicated which claims are withdrawn from consideration in the Office Action Summary, but it is assumed that the claims which are not listed as rejected in the Summary or in the Examiner's Index of Claims, specifically claims 4 to 7, 10, 12, 13, 16, 17, 19, 20, 23, 25, 28 to 34, 42 to 48, and 54, are withdrawn, as discussed with the Examiner in a telephone interview on March 16, 2007. These claims correspond more or less exactly to the claims listed as non-elected in the Amendment of September 25, 2006, apart from claims 43 and 46, and it is assumed that the Examiner disagreed with the Applicant's inclusion of these two claims as directed to the elected embodiment. The claim identifiers in the foregoing listing therefore reflect the withdrawn status of claims 4 to 7, 10, 12, 13, 16, 17, 19, 20, 23, 25, 28 to 34, 42 to 48, and 54.

Although claim 54 is non-elected and assumed withdrawn, this claim is mentioned on page 4 of the Office Action, where it is stated:: "In regard to claim 54 the examiner notes that the device of Scotti is capable of performing the claimed function." Since this claim is withdrawn and there is no Scotti reference cited in the Office Action, the rejection of claim 54 has not been addressed in the following remarks.

New Claims

Dependent claims 59 and 60 have been added in this amendment. Claim 59 is dependent from generic claim 50 and is also a generic claim readable on the elected species. Claim 60 depends from generic claim 36 and is directed to features of the non-elected embodiments of Figures 25 to 33.

35 USC §102(b) – Yu

In the last paragraph of page 3 of the Office Action and the first paragraph on page 4, the Examiner rejects claims 1, 22, 26, 27, 35, 37, and 49 as anticipated by Yu. This rejection is hereby respectfully traversed, and it is submitted that the listed claims are all distinguished from Yu.

For a reference to anticipate a claim, the reference must include each and every claimed element. Referring to amended independent claim 1, the primary support in Yu which supports the majority of the user's weight in the start position of an exercise (position of Figure 2) is the seat pad 31 and frame member 32. There is no secondary support which moves with the seat 31 and remains in the same orientation relative to the seat 31 throughout an exercise movement. All other parts of the user support frame as defined by the Examiner (back rest 42, handle 60, exercise arm 52) do not remain in the same orientation relative to the seat or primary user support throughout an exercise movement. Instead, the back rest and handle pivot relative to the seat and the exercise arm pivots away from the seat (see Figure 3). It is therefore submitted that claim 1 is not anticipated by Yu, and reconsideration and reversal of the rejection of claim 1 on this basis is respectfully requested.

Claims 22, 26, 27, and 35 depend from amended claim 1 and are distinguished from Yu for the same reasons as claim 1.

Amended independent claim 37 is also not anticipated by Yu. Yu does not have a primary and secondary user support which together support the majority of the user's body weight during an exercise and which travel together so that the secondary user support remains in the same angular orientation relative to the primary support during the exercise movement. Instead, the user supports which support the majority of the user's body weight (seat 31/32, back rest 41/42) pivot relative to one another in a scissoring movement during an exercise, and their orientation relative to one another changes continuously during an exercise movement from the position of Figure 2 to that of Figure 3. It is submitted that amended claim 37 is not anticipated by Yu, and reconsideration and reversal of the rejection of this claim is respectfully requested, along with claim 49 which depends from amended claim 37.

35 USC §103(a)- Yu

On pages 2 to 3 of the Office Action, the Examiner rejects claims 1,2,3,8,9,11,14,15,18, 21, 24, 26, 36, 37, 38, 39, 40, 41, 50, 51, 52, 53, 55, 57, and 58 as obvious in view of Yu. The Examiner

also rejects claim 56 as obvious in view of Yu on page 4 of the Office Action, arguing that it would have been obvious to raise the pivot point vertically on the support member 42 of Yu. These rejections are hereby respectfully traversed, and it is submitted that amended independent claims 1, 18, 36, 37, 50, and 51 are distinguished from this reference, as are the claims which depend from these claims, including new claim 59 which depends from amended claim 50, and new claim 60 which depends from claim 36.

An invention is unpatentable if the differences between it and the prior art would have been obvious at the time of the invention. As stated in MPEP § 2143, there are three requirements to establish a *prima facie* case of obviousness. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicant's disclosure. Where a single reference is used in an obviousness rejection, all three requirements must be found in the single reference.

Obviousness can only be established by modifying a single prior art reference where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the reference itself, or in knowledge generally available to one of skill in the art. There is no suggestion in Yu or in knowledge generally available in the art which would provide a motivation to modify Yu in the manner suggested by the Examiner. The Examiner has failed to provide any motivation for making such modifications. Also, Yu does not teach or suggest all of the claim limitations, as discussed below. The three criteria for an obviousness rejection are therefore not met by the Yu reference.

As has been noted above in connection with the rejection of claim 1 as anticipated by Yu, this reference lacks a primary user support which supports the majority of the user's body weight in an exercise start position along with a secondary user support which remains in the same orientation relative to the primary user support throughout an exercise movement. There is no motivation suggested by the teachings of Yu or any other reference to modify Yu in this respect, nor any suggestion that any such modification would be successful. Finally, Yu does not teach or suggest all

the claim limitations of amended claim 1, and specifically does not suggest the primary and secondary user supports remaining in the same relative orientation as noted above. If the secondary support in Yu is the back rest 41, 42, Yu specifically teaches that this part is pivoted relative to the seat support rods 32 (column 2, lines 40 to 43), and describes pushing the handle 60 which is secured to back rest 42 backward while pushing the footrest assembly 50 forward (column 3, lines 4 to 10) to achieve the desired exercise illustrated in Figures 3 and 4. Modification of Yu's exerciser to maintain the back rest in the same orientation relative to the seat throughout the exercise would mean that the exercise described by Yu could not be achieved. Such a modification would clearly be contrary to Yu's own teachings and cannot be obvious. It is therefore submitted that amended claim 1 is not obvious in view of Yu.

Claims 2, 3, 8, 9, 11, 14, 15, 24, 26, and 55 depend from amended claim 1 and are distinguished from Yu for the same reasons as claim 1. Additionally, referring to claims 2 and 3, the seat pad and back pad in Yu do not remain in the same orientation relative to one another throughout an exercise movement, as can be seen by comparing the relative orientations in Figures 2 and 3 of Yu.

Amended independent claim 18 is also not obvious in view of Yu. The user support frame in Yu does not have a user support having a base member and an upright extending at an angle to the base member which is fixed and not movable relative to the base member, with the primary support comprising a pad mounted on the base member. The only possible user support base member in Yu is the user seat supporting rods 32, and there is no upright fixed to these rods and extending generally upwardly at an angle to these rods. Instead, the back support 42 is pivoted to seat supporting rods 32 as illustrated in the drawings. There is no suggestion in Yu or any other reference to modify Yu by replacing the pivot connection with a fixed connection, and such a modification would be contrary to Yu's teaching of the desired exercise movement. It is therefore submitted that amended claim 18 is not obvious in view of Yu.

Claim 21 depends from amended claim 18 and is distinguished from Yu for the same reasons. Additionally, the user support pivot axes in Yu are the pivots on pivot mounts 23 and 121, not located at the junction between the base member and upright.

Claim 56, which also depends from amended claim 18 and is also rejected by the Examiner as obvious in view of Yu, is distinguished from Yu for the same reasons as stated above in

connection with claim 18. Also, the Examiner comments that the pivot axis of claim 18 is at the junction of base member 32 and upright 42. It would clearly change the exercise performed in Yu's machine if this pivot point were raised. Raising this pivot point on back rest 42 will raise the fixed handle 60, causing the user's arms to have a different, more raised starting position in Figure 2 and potentially an awkward, arms bent ending position in Figure 3. It is therefore respectfully submitted that such a change would involve a change in the functionality or exercise function of Yu's device, and would not be an obvious modification or substantial functional equivalent of Yu.

Amended independent claim 36 is also not obvious in view of Yu. The Yu exercise machine has two movably mounted exercise arms, specifically arm 52 and arm 60, which engage the user's feet and hands, respectively. Both of these arms must be actuated in order to control movement of the entire user support frame from the start position of Figure 2 to the end position of Figure 3, as described by Yu in column 3, lines 4 to 10. As stated by Yu:

"the user pulls the handle 60 backward with his hands and push the footrest assembly 50 forward with his feet....., thereby exercising his hands, feet, lumbar and backsimultaneously." The reference to Figures 3 and 4 in this section of Yu appears to be a typographical error, since, as stated in column 1, lines 56-57, "FIGS. 2 and 3 illustrate the working principle of the present invention."

Yu therefore does not describe or suggest an exercise machine which has an exercise arm assembly movably mounted on one of a main frame or user support frame, the exercise arm assembly having at least one user engaging portion which engages one body part comprising the user's hands or feet, such that movement of the entire user support frame in an exercise is controlled by the actuation of the exercise arm assembly by the one body part. Yu requires two body parts to control an exercise movement by moving two separate exercise arms, specifically the hands moving handle 60 and thereby backrest 42, and the feet moving exercise arm 52.

It is therefore submitted that amended claim 36 is not obvious in view of Yu. New claim 60 which depends from claim 36 is also distinguished from Yu.

Amended independent claim 37 is also distinguished from Yu, for similar reasons to claims 1 and 18. Specifically, Yu does not describe or suggest in any way a primary and secondary user support which together support the majority of the user's body weight during an exercise and which travel together so that the secondary user support remains in the same angular orientation relative to

the primary support during the exercise movement. Yu clearly intends the orientation of the secondary support (or supports) relative to the primary support to vary during the exercise movement, as indicated by Figures 2 and 3 and his description of the exercise.

Claims 38 to 41, 57 and 58 depend from amended claim 37 and are distinguished from Yu for the same reasons as claim 37. Additionally, referring to claims 38 or 39, there is no additional user support mounted on the user support frame which moves with the user support frame. The user support frame which supports the majority of the user's body weight in Yu is the frame 32, and there is no additional user support which is mounted on and moves with this frame. Part 512 is a foot rest completely separate from the user support frame and moves as a result of activation by the user's feet. Referring to claim 58, which depends from claim 38, there is no additional user support which is fixed relative to the user support frame during an exercise movement.

Amended claim 50 is also distinguished from Yu. Yu does not have an exercise arm movable relative to at least one of the main and user support frames and movably mounted on that frame, and a connecting link linking movement of the exercise arm to movement of the entire user support frame. On page 2 of the Office Action, the Examiner contends that the user support frame in Yu comprises parts 32, 42 and 52 and that the user engagement device is mounted on frame part 42, pointing out that the applicant originally did not claim that the engagement device is movable relative to one of the frames. Amended claim 50 now defines the exercise arm as movable relative to the frame on which it is movably mounted, which is not true of handle 60 which is fixed to the frame part (back support 42) on which it is mounted. Also, the connecting link 33, 20, and 43 which links movement of handle 60 and back support 42 to the movement of base member 32 does not link movement of the so-defined exercise arm to movement of the entire user support frame, which includes back rest 42. Back rest 42 is moved directly by exercise arm or handle 60, since it is fixed to the handle. Foot engaging assembly 52, which the Examiner also defines as part of the user support, is not moved by movement of handle 60 via the connecting link defined by the Examiner, but instead controls the overall exercise movement together with actuation of handle 60, depending on how much pressure is applied by the user's feet. This is completely different from the exercise movement in this invention.

It is therefore submitted that amended claim 50 is also not obvious in view of Yu.

New generic claim 59 depends from claim 50 and is also distinguished from Yu for the same reasons as claim 50, and also since Yu does not suggest a secondary user support in the form of a leg support which is part of the user support frame and also linked to the exercise arm by the connecting link so that it moves in response to movement of the exercise arm.

Amended independent claim 51 is also not obvious in view of Yu. Yu does not describe or suggest a primary support comprising a seat pad and a secondary support comprising a leg support which travels in the same direction as the seat pad during an exercise movement. Instead, the leg support 50 in Yu is part of an exercise arm which travels in the opposite direction to the seat pad 31 during an exercise, as seen in Figures 2 and 3. In Yu, the arm or leg support 52 rotates away from the user in an anti-clockwise direction as viewed in the drawings between the start and end positions of Figures 2 and 3. At the same time, the seat pad 31 and seat supports 32 rotate in a clockwise direction about the pivot on pivot mount 121 between the substantially horizontal position of Figure 2 and the rearwardly tilted position of Figure 3. The leg support and seat pad in Yu therefore do not travel in the same direction, and there is absolutely no suggestion in Yu of modifying this reference in this regard. Such a modification would completely change the exercise movement of the various parts of the user's body, and appears to be contrary to the desired exercise movement described by Yu in column 3, lines 4 to 10 and the objective in column 1, lines 30 to 33.

It is therefore submitted that amended claim 51 is also not obvious in view of Yu.

Claim 52 depends from claim 51 and is distinguished from Yu for the same reasons as claim 51.

In view of the foregoing amendment and argument, it is submitted that claims 1, 2, 3, 8, 9, 11, 14, 15, 18, 21, 24, 26, 36, 37, 38, 39, 40, 41, 50, 51, 52, 53, 55, 56, 57, 58, 59, and 60 are not obvious in view of Yu, and reconsideration and reversal of the rejection of these claims based on this reference is respectfully requested.

35 USC §103(a)- Yu and Chen

On page 4 of the Office Action, the Examiner has rejected claim 49 as obvious based on Yu combined with Chen. This rejection is hereby respectfully traversed, and it is submitted that the proposed modification of Yu to provide an adjustable exercise arm as in Chen would not result in the invention as claimed in claim 49 without additional, non-obvious modifications.

Claim 49 depends from amended claim 37, and the features of claim 37 lacking from Yu are similarly lacking from Chen. Neither of these references has a user support frame with at least a primary and a secondary user support which together support the majority of the user's body weight and travel together during an exercise movement with the secondary user support at the same angular orientation relative to the primary user support throughout the exercise movement.

It is therefore submitted that claim 49 is not obvious in view of Yu and Chen, and reconsideration and reversal of the rejection of this claim is respectfully requested.

Withdrawn (Non-elected) Claims

It is submitted that the non-elected claims which were withdrawn from consideration all depend on an allowable generic claim. Consideration and allowance of these claims is respectfully requested on allowance of the generic claims from which they depend.

CONCLUSION

It is believed that all claims remaining in this application, specifically claims 1 to 60, are now in condition in all respects for allowance, and early notice to this effect is earnestly solicited. If the Examiner has any questions or comments regarding the above Amendments and Remarks or believes that a telephone conversation may be useful in advancing prosecution, the Examiner is invited to contact the undersigned at the number listed below.

Respectfully submitted,
Procopio, Cory, Hargreaves & Savitch LLP

Dated: March 19, 2007

By: Katherine Proctor
Katherine Proctor
Reg. No. 31,468

Procopio, Cory, Hargreaves & Savitch LLP
Customer No. 27189
530 B Street, Suite 2100
San Diego, California 92101-4469
T. (619) 238-1900